

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)
Against the COMMITTEE FOR)
SUPPORT OF HELENA SCHOOLS)

SUMMARY OF FACTS AND STATEMENT OF FINDINGS

Bobby J. Spilker filed a complaint against the Committee for Support of Helena Schools (Committee), alleging numerous violations of Montana's election laws. The complaint consists of three letters written by Ms. Spilker, alleging the following violations:

Claim 1: The Committee name does not comply with Mont. Code Ann. § 13-37-210, because it does not identify the economic or special interest of a majority of its contributors.

Claim 2: The Committee failed to report an expenditure for a flier that was distributed prior to the May 16, 1995, mill levy election.

Claim 3: The Committee failed to report an expenditure for a radio ad in support of the mill levy.

Claim 4: Although not directly alleged, the complaint implies that school district funds or resources were used to pay for ads in support of the mill levy.

Claim 5: The Committee failed to report two \$100 contributions within the time period required by Mont. Code Ann. § 13-37-226.

Claim 6: The Committee solicited votes on election day in violation of Mont. Code Ann. § 13-35-233.

Claim 7: A person other than the Committee's campaign treasurer or deputy campaign treasurer made expenditures for the Committee.

Claim 8: A radio ad prepared by the Committee did not contain all of the information required by Mont. Code Ann. § 13-35-225.

Claim 9: The Committee made a false statement concerning approximately \$700,000 in state equalization aid money during the mill levy election campaign.

SUMMARY OF FACTS

1. The Committee filed an organizational statement, designated as form C-2, with the Commissioner of Political Practices (Commissioner) on April 27, 1995. The form lists the name "Committee for the Support of the Helena Schools Mill Levy," and an address of 55 South Rodney, Helena, Montana. 55 South Rodney is the address of Helena School District No. 1 (School District 1).

2. The C-2 lists the issue supported by the Committee as the School District 1 elementary and high school mill levy election, scheduled for May 16, 1995. Karen Marble, who is listed as the chairperson of the Committee, prepared and filed the C-2. The TriCo Educational Federal Credit Union, a credit union for educators and their families, is listed as the Committee's primary campaign depository. Cheryl Gillespie is listed as the campaign treasurer. Neither she nor her spouse are employed by the school district, thus she is not eligible to join the credit union.

3. Following receipt of the Committee's C-2, the Commissioner's office sent a letter, dated May 1, 1995, to Cheryl Gillespie. The letter states, in paragraph 2:

As treasurer for the committee, you are responsible for depositing and disbursing campaign funds, for keeping detailed accounts of the financial affairs of the committee, and for seeing that campaign finance reports are filed in a timely manner.

Included with the letter were campaign reporting forms (designated C-6 and C-7), an accounting and reporting manual, and a 1995 calendar of reporting dates. Form C-6 is used for periodic reports of contributions and expenditures by a political committee. Form C-7 is used for reporting contributions of \$100 or more received by a political committee between the 17th day before and the date of an election.

4. In the May 16, 1995, election, voters approved the elementary school mill levy but narrowly rejected the high school mill levy. A new election for the high school mill levy was scheduled for June 27, 1995. At a meeting of the school board on June 7, 1995, the election was rescheduled for July 18, 1995.

5. On June 9, 1995, a new C-2 was filed with the Commissioner. The form again lists the name "Committee for the Support of the Helena Schools Mill Levy," but the address is changed to 606 Touchstone Court, which is also the address of the committee treasurer, Cheryl Gillespie.

6. The second C-2 lists the issue supported by the Committee as the School District 1 high school mill levy election. Karen Marble, who again is listed as the chairperson of the Committee, prepared and filed this second C-2.

7. Cliff Roessner is the business manager for School District 1. He served on the Committee, along with Cheryl Gillespie, Karen Marble (a teacher at Warren School), Kevin McRae (communications officer for School District 1), and Charlie Hail

and Don Johnson (School District 1 trustees). Cliff Roessner was not aware that Karen Marble had listed the Committee's address as 55 South Rodney on the initial C-2 filed with the Commissioner. He stated that had he seen the address he would have changed it on the form.

8. Neither Cliff Roessner nor Cheryl Gillespie were aware that Karen Marble filed the second C-2 on June 9, 1995. On July 7, 1995, the Committee filed a third C-2. This time the name on the C-2 is listed as the "Committee for Support of Helena Schools," with an address of 606 Touchstone Court. Cheryl Gillespie is listed as the campaign treasurer, and Karen Marble is listed as an additional officer of the Committee. The third C-2 was filled out by Cliff Roessner. Karen Marble was not aware that the third C-2 had been filed. She believes she advised either Cheryl Gillespie or Cliff Roessner that she had filed the second C-2 on June 9, 1995.

9. Karen Marble initially used the 55 South Rodney address, on the first C-2 filed with the Commissioner, because she felt the Committee needed a "central clearinghouse." She changed the address on the second C-2 that was filed following questions from the media concerning the use of the School District 1 address by the Committee.

10. Despite the variations in the names listed on the C-2's, there is only one committee. The correct name is the "Committee for Support of Helena Schools."

11. On April 27, 1995, when the first C-2 was filed (for the May 16 election), there had been no contributors to the Committee. On June 9, 1995, when the second C-2 was filed (for the July 18

election), there had been 21 contributors to the Committee. Of those, three were school board trustees and 15 were employees of School District 1. On July 7, 1995, when the third C-2 was filed, there had been 30 contributors to the Committee (those who made more than one contribution were only counted as one "contributor"). Of those, five were school board trustees and 17 were employees of School District 1.

12. Although the C-2's identify Cheryl Gillespie as the campaign treasurer of the Committee, she did not sign any checks for expenditures by the Committee. Since Ms. Gillespie is not eligible to be a member of the TriCo Educational Federal Credit Union (the designated campaign depository for the Committee), she cannot sign checks on the Committee's checking account. Cliff Roessner signed all checks for expenditures by the Committee, but Cheryl Gillespie reviewed all expenditures to ensure that they were appropriate. Cliff Roessner was not appointed by Ms. Gillespie as a deputy campaign treasurer for the Committee.

13. The complaint alleges that the Committee's C-6 filed with the Commissioner on June 1, 1995 fails to list an expenditure for campaign fliers prepared by the Committee. Karen Marble and a person at the Montana Education Association (MEA) prepared a campaign flier in support of passage of the mill levy prior to the May 16, 1995, election. The flier states it was paid for by the "Committee for Support of the Helena Schools Mill Levy, 55 South Rodney, Helena, MT 59601." MEA printed copies of the flier, which were distributed to households in the Helena area prior to the May 16 election. MEA sent the bill for the fliers to the Helena Education Association (HEA), rather than to the Committee. During

this investigation, members of the Committee learned that the bill had not been paid. The bill was paid by the Committee on September 13, 1995. Cheryl Gillespie has stated that the Committee will file an amended report with the Commissioner listing the expenditure (form C-6).

14. The complaint alleges that the Committee's C-6 filed with the Commissioner on August 7, 1995 fails to list an expenditure or a "debt owed" for a campaign ad played on Helena radio station KHKR. Casey Tuckerman is a teacher at the Helena Middle School and president of HEA. He prepared a radio ad that was aired on Helena radio station KHKR on July 16 and 17, 1995. Del Lonnquist of KHKR stated that a bill for \$48 for the ad was sent to Cliff Roessner at 55 South Rodney on August 1, 1995. The bill is dated July 31, 1995. Cliff Roessner stated that the bill was not received by the Committee. KHKR sent another copy of the bill to the Committee on August 28, and it was received by the Committee on August 29, 1995. Cheryl Gillespie has stated that the Committee will pay this bill and file an amended C-6 report with the Commissioner listing the expenditure.

15. Cindy Lewis performed some volunteer work for the Committee. She arranged for the taping of three radio ads in support of the mill levy. The ads were scheduled to be played on radio stations KMTX-AM, KMTX-FM, KBLL-AM, KBLL-FM, KCAP-AM, AND KZMT-FM. All ads were scheduled for Monday, July 17, 1995.

16. Bobby Spilker stated she heard one of the radio ads on KBLL on the morning of July 18, 1995, which was election day. She stated that Terry Frisch heard the same radio ad later on the same day. While Terry Frisch at first stated he was not certain when

the ad was played, and on which station, he later stated he believes he heard the ad on KBLT after 3:30 on the afternoon of July 18.

17. Jim Schaeffer is the general manager of KBLT radio. He confirmed that an ad in support of passage of the mill levy had run on election day, July 18. He stated that this was not the result of a request by the Committee, but was instead due to a scheduling error at the radio station. Upon discovering the error, the ad was pulled. No one from the Committee requested that any radio ads prepared by the Committee be run on election day.

18. The complaint alleges that the radio ads in support of passage of the mill levy did not state the name and address of the Committee's treasurer. The radio ads prepared by the Committee contained the following attribution: "Paid for by Citizens for the High School Mill Levy." No treasurer's name or address was given.

19. The complaint alleges that two \$100 contributions were not immediately reported to the Commissioner as required by Mont. Code Ann. § 13-37-226. Luxan & Murfitt, a Helena law firm, made a \$100 contribution, received by the Committee on July 11, 1995. Casey Tuckerman contributed \$100 to the Committee with a check dated July 20, 1995. In addition, the Committee received a \$300 contribution from HEA Pace on May 2, 1995, a \$500 contribution from HEA on May 3, 1995, and a \$100 contribution from Gary Toothaker on May 8, 1995.

20. The contributions from Luxan & Murfitt and Casey Tuckerman were reported to the Commissioner on the Committee's C-6 filed on August 7, 1995. The contributions from HEA Pace, HEA, and Gary Toothaker were reported to the Commissioner on the Committee's

C-6 filed on June 1, 1995. The Committee did not file C-7's for the five contributions of \$100 or more.

21. The complaint questions whether School District 1 money, school facilities, or school equipment were used to perform the work of the Committee. Bobby Spilker stated that because a Committee flier listed the business address of School District 1, she "became concerned that tax money, school facilities, or equipment were being used to influence the outcome of the election." Aside from the reference to the flier with the 55 South Rodney address, the complaint included no other evidence of such improprieties.

Cliff Roessner, Karen Marble, and Kevin McRae stated unequivocally that no employees of School District 1 did any work for the Committee during their hours of employment. Their work for the Committee was performed during lunch hours, during vacations, or in the evenings, and no public funds or School District 1 facilities or equipment were used. Committee meetings were held off school district property, and normally in the evenings. Superintendent of Schools Gary Toothaker stated that he made it clear to employees of School District 1 that they were not permitted to perform work for the Committee on public time, and that no public funds could be used. The investigation by this office disclosed no evidence that school district resources were involved in the work of the Committee.

22. The complaint alleges that a statement made in one of the radio ads prepared by the Committee is false. Specifically, it is alleged that the claim that \$700,000 in state equalization aid money would go "somewhere else" if the levy is not passed is false.

The complaint alleges that this statement may have affected the outcome of the election. Because this office lacks jurisdiction to review this matter, as discussed in the Statement of Findings below, no investigation regarding these allegations was conducted.

STATEMENT OF FINDINGS

Findings and Discussion With Respect to Specific Claims

Claim 1

The complaint alleges that the Committee's name does not comply with Mont. Code Ann. § 13-37-210, which provides:

Naming and labeling of political committees. (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer; . . .

When the Committee filed its first C-2 ("organizational statement") on April 27, 1995, there had been no contributors to the Committee. When it filed its second and third C-2's, however, there had been a number of contributors, the majority of whom shared both an identifiable economic or special interest and a common employer. (Fact summary 11.) The common employer is School District 1. The employees who contributed to the Committee share the economic or special interest of ensuring the continued financial viability of their employer, the school district. The Committee's name should more clearly reflect that interest by identifying the common employer of a majority of its contributors, School District 1.

Claim 2

The complaint alleges that the Committee failed to report an expenditure for a flier that was distributed prior to the May 16, 1995 mill levy election. Mont. Code Ann. § 13-37-225(1) requires political committees to file "periodic reports of . . . expenditures made by or on behalf of a . . . political committee [emphasis added]." Mont. Admin. R. 44.10.531 provides, in relevant part:

EXPENDITURES, REPORTING (1) An expenditure is made on the date payment is made, or in the case of an in-kind expenditure, on the date the consideration is given. [Emphasis added].

MEA, which printed copies of the flier, sent the bill to HEA rather than to the Committee. The Committee, after learning that the bill had been misdirected, paid the bill on September 13, 1995. The Committee treasurer has stated that an amended report listing the expenditure will be filed. (Fact summary 13.) The evidence does not support a finding that the Committee failed to report an expenditure, because the expenditure was not "made" until September 13, 1995.

Claim 3

The complaint alleges that the Committee failed to report an expenditure for a radio ad in support of the mill levy. As noted in fact summary 14, the Committee has not yet paid the bill for the radio ad, thus no expenditure has yet been "made." As in the case of Claim 2, the evidence does not support a finding that the Committee failed to report an expenditure for the radio ad.

Claim 4

The complaint speculates concerning whether School District 1 money, facilities, or equipment were used to carry out the work of the Committee, or whether School District 1 employees worked on Committee matters during their employment hours. As noted in fact summary 21, no evidence was disclosed that would support a finding that employees of School District 1 did any work for the Committee during their hours of employment, or that public funds or School District 1 facilities or equipment were used for Committee purposes.

As previously noted, the complaint does not directly allege that school district funds or resources were used, but expresses the suspicion that this was done, primarily due to the Committee's use of the 55 South Rodney address on its campaign fliers. No other evidence was presented with the complaint, and none was discovered during this extensive investigation, that refutes the employees' claim that their work for the Committee was done on their own time. While the Committee's use of the 55 South Rodney address on its campaign literature may have reflected poor judgment, it does not support a finding that public resources or employees were improperly involved in the activities of the Committee. The investigator for this office pursued this issue and no evidence of impropriety was found.

Claim 5

The complaint alleges that the Committee failed to file C-7 reports for several \$100 contributions. As noted in the summary of facts, Luxan & Murfitt contributed \$100 on July 11, 1995, seven days prior to the July 18 election. Casey Tuckerman contributed

\$100 on July 20, 1995, two days after the July 18 election. Additional investigation disclosed that three other contributions of \$100 or more were received by the Committee on May 2, 3, and 8, 1995, prior to the first mill levy election held on May 16, 1995. (Fact summary 19.)

Mont. Code Ann. § 13-37-226(3) requires a political committee organized to support a local issue to file a report "within 24 hours after receiving a contribution of \$100 or more if received between the 17th day before and the day of the election." See Mont. Code Ann. § 13-37-226(4). The Commissioner's office requires a committee to report any such contribution on a C-7 form. (Fact summary 3.) Pursuant to this requirement, the Committee should have reported the contributions from HEA Pace, HEA, Gary Toothaker, and Luxan & Murfitt by filing C-7 forms within 24 hours. The Commissioner's office had provided the Committee's treasurer with C-7 forms, an accounting a reporting manual, and a 1995 calendar of reporting dates on May 1, 1995. Since the contribution from Casey Tuckerman was not received until after the July 18 election, no C-7 for that contribution had to be filed.

Claim 6

The complaint alleges that, because radio station KBLT played a Committee campaign ad on election day (July 18, 1995), there was a violation of Mont. Code Ann. § 13-35-233. That statute provides:

Solicitation of votes on election day. (1) It is unlawful for a person or a political committee to place an advertisement supporting or opposing a candidate or a ballot issue for use on election day. . . .

(2) A person convicted of solicitation of votes on election day is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined not to exceed \$1,000, or both.

The ad was played on election day due to an error in scheduling at KBLT. Upon discovering the error, the station manager removed the ad. There is no evidence that the Committee requested the ad be played on election day. (Fact summary 17.) The evidence therefore does not support a finding that the Committee violated Mont. Code Ann. § 13-35-233.

Claim 7

The complaint alleges that a person other than the Committee's treasurer or deputy treasurer made expenditures for the Committee. Cliff Roessner wrote the checks for the Committee, because Cheryl Gillespie, the treasurer, was not eligible to draw money from the Committee's credit union account. (Fact summaries 2 and 12.) Cliff Roessner was not listed as the Committee's campaign treasurer, nor was he appointed to act as deputy campaign treasurer pursuant to Mont. Code Ann. § 13-37-202. (Fact summary 12.)

The statutes do not clearly state that only a political committee's treasurer or deputy treasurer may make expenditures. See Mont. Code Ann. §§ 13-37-201 to -209, 13-37-215. The Committee's treasurer, however, was advised of this restriction pursuant to a letter from the Commissioner's office dated May 1, 1995. (Fact summary 3.) This requirement is also specified in Mont. Admin. R. 44.10.503:

DEPOSITS AND EXPENDITURES, ONLY BY CAMPAIGN TREASURER, THROUGH DEPOSITORY (1) No contribution received or expenditure made by a candidate or political committee shall be deposited or expended except by the appointed campaign treasurer or duly authorized deputy treasurer through the designated primary or secondary depository.

. . . .

(3) All expenditures, except expenditures from the petty cash fund, shall be made by check drawn on the designated depository.

Thus, while the statutes lack clarity on the question, the Commissioner's rule clearly sets forth this restriction on the expenditure of funds by a political committee.

Claim 8

The complaint alleges that a radio ad prepared by the Committee did not contain the information required by Mont. Code Ann. § 13-35-225, which provides in pertinent part:

Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. [Emphasis added].

It is alleged that the statute was violated because the radio ads, while they listed the name of the Committee, did not state the name and address of the Committee treasurer. (Fact summary 18.)

Mont. Code Ann. § 13-35-225(3) states:

If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1).

Thus, the Legislature has determined that a failure to include the requisite information within the attribution for a paid political ad can be rectified by providing that information to the Commissioner within five days of discovering the deficiency, and

making "every reasonable effort to bring the material into compliance" with the statute.

The attribution included with the radio ads should have included the name and address of the Committee's treasurer, to be in full compliance with Mont. Code Ann. § 13-35-225.

Claim 9

The complaint alleges that a statement made by the Committee in ads supporting passage of the mill levy is false. Specifically, it is alleged that the contention that \$700,000 in state equalization aid money would go somewhere else if the levy failed is a false statement. The complaint does not specify which election laws are alleged to have been violated as a result of the statement.

The jurisdiction of the Commissioner is set forth in Mont. Code Ann. § 13-37-111:

Investigative powers and duties. (1) The commissioner of political practices shall be responsible for investigating all of the alleged violations of the election laws contained in chapters 35, 36, or 37 of this title and shall in conjunction with the county attorneys be responsible for enforcing these election laws.

The Commissioner may also inspect all statements filed with his or her office to determine compliance with chapters 35, 36, or 37 of title 13. Mont. Code Ann. § 13-37-111(2). Through consultation and cooperation with the county attorneys, the Commissioner may pursue any criminal or civil prosecution justified under chapters 35, 36, or 37 of title 13. Mont. Code Ann. §§ 13-37-124 and 13-37-125.

Mont. Code Ann. § 13-35-234 describes the offense of political criminal libel and misrepresentation of voting records, but it is

limited to statements and representations concerning candidates, not ballot issues. Mont. Code Ann. § 13-35-301 sets forth Montana's Code of Fair Campaign Practices. This statute also applies only to candidates. There is not, in any event, any enforcement mechanism to address violations of the Code of Fair Campaign Practices.

A careful review of the other provisions of chapters 35, 36, and 37 of title 13, Mont. Code Ann., discloses that the alleged false statement described in the complaint does not fall within the jurisdiction of the Commissioner. The only way this could be addressed is through future legislative action.

Procedure and Potential Remedies

Mont. Code Ann. § 13-37-124(1) states that whenever the Commissioner determines that there appears to be "sufficient evidence to justify a civil or criminal prosecution under chapters 35, 36, or 37", he shall notify the County Attorney and transmit to him or her the information relevant to the alleged violation. Mont. Code Ann. § 13-37-125 also implies that county attorneys have inherent investigative and prosecutorial authority over any alleged violations of these election laws, whether or not the matter is referred by the Commissioner. See also Mont. Code Ann. §§ 7-4-2712 and 7-4-2716.

The investigation of the allegations of this complaint has revealed no evidence of violation of any of the criminal statutes in chapters 35, 36, or 37 of title 13, Mont. Code Ann. Nor is there any evidence of an intentional violation of any of the provisions of the election laws. The investigation did not reveal any evidence that would support a finding that there were

violations with respect to claims 2, 3, 4, or 6. As previously noted, claim 9 involves a matter over which this office has no jurisdiction. There is, as reflected in these facts and findings, evidence that could be construed as a negligent violation of several statutes for which there are potential civil remedies. Specifically, the investigation into claims 1, 5, and 8 disclosed evidence that may support a finding that Mont. Code Ann. §§ 13-37-210, 13-37-226, and 13-35-225, respectively, were negligently violated. The investigation into claim 7 disclosed evidence that may support a finding that Mont. Admin. R. 44.10.503 was negligently violated.

There are several civil remedies that are available upon a determination that violations occurred and that remedial action is warranted. Mont. Code Ann. § 13-37-128 provides:

Cause of action created. (1) Except as provided in 13-37-306, any person who intentionally or negligently violates any of the reporting provisions of this chapter, shall be liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

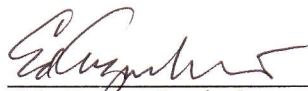
(2) Any person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter, is liable in a civil action brought by the commissioner or county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

An alternative remedy is available to the Commissioner pursuant to Mont. Code Ann. § 13-37-121. That statute allows the Commissioner to issue orders of noncompliance when it is determined that a report has not been filed, or that a report filed with the Commissioner does not comply with the requirements of the law. A

political committee then has either five or ten days to come into compliance or face the potential of an action brought by either the Commissioner or County Attorney pursuant to Mont. Code Ann. §§ 13-37-124 and 13-37-125. Orders of noncompliance are also subject to judicial review pursuant to Mont. Code Ann. § 13-37-122.

I express no opinion at this time on the question of whether there is sufficient evidence to justify the exercise of any of the civil remedies available under the statutes. Because the evidence, however, reveals the potential for such a determination, it is appropriate to transmit the matter to the County Attorney for his review and possible exercise of prosecutorial discretion.

Dated this 28th day of September, 1995.



Ed Argenbright, Ed.D.
Commissioner of Political Practices